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IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 1420 / 2006 SINGLE BENCH

Petitioner : Laxmibai @ Kumari Bai
Aged about 35 years,
W/o Raj Kumar R/o Village – Tarbahar (Near Bade Masjid) Bilaspur, Thana – Tarbahar Bilaspur, Tahsil & Dist : Bilaspur-(C.G.)

Versus

Respondents/ Claimants :1. Ganga Prasad,
S/o Rati Ram,
Aged about 42 years,
Caste-Satnamai,

2. Smt. Kumari Bai
W/o Ganga Prasad
Aged about 38 years,

Both R/o Village Karankapa,
Thana & Tahsil – Lormi,
Dist : Bilaspur-(C.G.)

1472/06
Diary No.
Presented/Signed on 31/3/06
dated

Respondents/ Defendant No.1 :3. Kamal Prasad
S/o Arjun Das,
Aged about 26 years,
Caste – Satnami,
The then vehicle driver Tractor No.CG-10A/5456 and Trolley No.CG-10A/5457, Permanent R/o Village Karankapa, Thana & Tahsil – Lormi-(C.G.)

Respondents/ Defendant No.2 4. Janak Ram,
S/o Manrakhan,
Aged about 50 years,
Caste – Satnami,
Co-owner of the Vehicle Tractor No.CG-10A-5456 and Trolley No.CG-10A/5457 R/o Village Ghonghapara, Thana & Tahsil – Lormi

Respondents/ Defendant No.3 5. Sonu
S/o Bihari Satnami,
Aged aobut 30 years,
Co-owner of vehicle Tractor No.CG-10A/5456 and Trolley No.CG-10A/5457 R/o Village Ghorbandha, Thana & Tehsil – Lormi, Dist : Bilaspur-(C.G.)

Respondents/ Defendant No.4	:6.	Shiv Das S/o Shiv Prasad, Aged about 45 years, Co-owner of Vehicle Tractor No.CG-10A/5456 and Trolley No.CG-10A/5457, R/o Bandhawa Thana Lalpur, Tahsil – Lormi-(C.G.)
Respondents/ Defendant No.5	:7.	The Oriental Insurance Company Limited, Divisional Office, Bilaspur, Dist : Bilaspur-(C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

(62)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 1420/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

09/02/2007

Shri Rajnish Singh Bhagel, counsel for the petitioner.

Heard on admission.

The petitioner has challenged the validity, legality and propriety of that part of the order dated 19/1/2006, by which, her application dated 14/9/2005 (I.A. No. 3) filed under Order 1 Rule 10 (1) & (2) of the Code of Civil Procedure for adding her as a claimant party, has been dismissed by the Claims Tribunal.

A perusal of the impugned order would show that in a pending claim petition filed by respondents No. 1 & 2 before the Second Additional Motor Accident Claims Tribunal Mungeli Bilaspur, on account of death of one Manoj Kumar, this petitioner had filed the aforesaid application. The above claim petition was filed by the respondents No.1 & 2 showing themselves to be the mother and father of the deceased. The petitioner has filed the aforesaid application (I.A.No.3) on the ground that in fact she is the natural mother of the deceased and she should also be added as a party-claimant in the matter. The learned Claims Tribunal after going through the application and the document filed in support thereof and further after hearing the contentions of the respondents No. 1 & 2 dismissed the petition holding that the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No.1420/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioner does not prima facie appear to be a necessary party in this case as according to the Tribunal prima facie she does not appear to be the mother of the deceased.

Learned counsel for the petitioner submits that the Claims Tribunal ought to have allowed the aforesaid application and it should have adjudicated the matter in presence of all the parties, who are claiming to be the dependents of the deceased. The Claims Tribunal has relied upon the contentions of respondent no.1, in which he has denied that the petitioner is his wife and it has also relied upon the contents of some certificate of Class-6 of the deceased filed by the claimants in which claimant/respondent No.1 has been shown to be the father and respondent No.2 has been shown to be the mother of the deceased. It has also relied on other documents showing the relationship between the parties.

As far as provisions of Order 1 Rule 10 of C.P.C., is concerned the principles of *dominus litus* applies. The plaintiff is *dominus litus* in a suit to chose the defendant and if the plaintiff does not chose anybody as a defendant in a case the suit could proceed at the risk of the plaintiff and in case the person so claimed is found to be a necessary party it may fail also. In the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No.1420/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

opinion of this Court the Tribunal has committed no error of law or irregularity warranting interference in the impugned order, under Article 227 of the Constitution of India. However, looking to the contentions and the claims raised by the petitioner before this Court, the petitioner shall be at liberty to file an independent claim petition before the Claims Tribunal which shall be entertained and disposed of by the Claims Tribunal in accordance with the provisions of law.

According, this writ petition is disposed of with the aforesaid observations.

In view of the above, M.W.P. No. 1086/2006 for grant of interim relief, I.A.No. 3056/2006 for urgent hearing and I.A.No. 11308/2006 for listing the case out of turn, also stand disposed of.

Sd/-
Sunil Kumar Sinha
Judge

P.T.O.